



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/579,401

02/01/2007

Axel Eble

100717-649-WCG

1324

27386

7590

01/06/2009

NORRIS, MCLAUGHLIN & MARCUS, P.A.

875 THIRD AVE

18TH FLOOR

NEW YORK, NY 10022

EXAMINER

JANCA, ANDREW JOSEPH

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

01/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/579,401	<b>Applicant(s)</b> EBLE ET AL.	
	<b>Examiner</b> Andrew Janca	<b>Art Unit</b> 1797	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/12/2006</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Summary***

1. This is the initial Office action based on the 10/579,401 application filed November 6, 2004.
2. Claims 1-9 are pending and have been fully considered.
3. Line numbers in US patents will be referred to by "xx:yy", where "xx" is the page or column number and "yy" are the line numbers. Paragraphs in published US applications will be referred to by "Pzz", where "zz" is the paragraph number.

### ***Priority***

4. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The use of the trademark or trade name "Becker mixer" as a limitation to identify or describe a particular product renders the claim scope uncertain, since the trademark or trade name cannot be used properly to identify any particular

Art Unit: 1797

material or product. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982), and MPEP 2173.05(u).

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 4, 5, 7, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by US 1,735,393 to Hiller.

9. With regard to claim 1, Hiller teaches a method of thawing a frozen, water-containing (2:100) product, animal fat in a solid state below its melting point (1:97-100), which comprises introducing the frozen product into a horizontal mixer 11, heating the mixer (10:38-40) and at the same time mixing the contents of the mixer intensively (10:46-55), whereby the frozen product is melted to form a liquid phase (1:97-100), and during such melting, any floating frozen product being is continually submerged in the liquefied phase and mixed with it (1:70-71).

10. With regard to claim 4, Hiller teaches that the horizontal mixer has wiping elements 21 which travel around the wall thereof (7:77-95).

11. With regard to claims 5 and 8, Hiller teaches that the frozen product is a protein-containing product from natural biological sources or from a biological process (1:97-100).

Art Unit: 1797

12. With regard to claim 7, Hiller teaches that the horizontal mixer is operated continuously (2:71-72).

13. Claims 1-3, 5, 7, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,846,054 to Mange et al.

14. With regard to claim 1, Mange et al teach a method of thawing a frozen, water-containing (2:13) product, animal fat in a solid state below its melting point (1:64-65), which comprises introducing the frozen product into a horizontal mixer 1, heating the mixer (5:19-31) and at the same time mixing the contents of the mixer intensively (5:39-44), whereby the frozen product is melted to form a liquid phase (5:41-42), and during such melting, any floating frozen product being is continually submerged in the liquefied phase and mixed with it (5:18-19).

15. With regard to claim 2, Mange et al teach that the horizontal mixer includes a disc mixer (5:68-6:10).

16. With regard to claim 3, Mange et al teach that the horizontal mixer has mixing elements which have internal heating (5:20-21, 5:28-29).

17. With regard to claims 5 and 8, Mange et al teach that the frozen product is a protein-containing product from natural biological sources or from a biological process (1:14-34; 2:26).

18. With regard to claim 7, Mange et al teach that the horizontal mixer is operated continuously (1:64-65).

19. Claims 1 and 4-9 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2,924,952 to Swenson et al.

Art Unit: 1797

20. With regard to claim 1, Swenson et al teach a method of thawing a frozen, water-containing product, ice cream (4:67), which comprises introducing the frozen product into a horizontal mixer (figure 1), heating the mixer at the frozen product's entry point (5:20-25) and at the same time mixing the contents of the mixer intensively (1:25-31), whereby the frozen product is melted to form a liquid phase (4:65-66), and during such melting, any floating frozen product being is continually submerged in the liquefied phase and mixed with it (5:45-50).

21. With regard to claim 4, Swenson et al teach that the horizontal mixer has wiping elements 29 which travel around the wall thereof (2:39).

22. With regard to claims 5 and 8, Swenson et al teach that the frozen product is a protein-containing product from natural biological sources or from a biological process, milkshakes or soft-serve ice cream (4:65-66).

23. With regard to claims 6 and 9, Swenson et al teach that the temperature of the mixture is maintained at less than 5 degrees C above the melting point of the frozen product, the mixing taking place within freezing cylinder 13 such that the mixture remains below its ordinary melting point during the process (1:15-25, 4:69-70, 5:49). The heating element 152 at the cylinder's entry port assists liquefaction (5:40-50), but the primary mechanism bringing the frozen mixture to a fluid consistency (4:65-66) is the agitation of dasher 24 (1:25-28).

24. With regard to claim 7, Swenson et al teach that the horizontal mixer is operated continuously (1:40).

***Conclusion***

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Janca whose telephone number is (571) 270-5550. The examiner can normally be reached on M-Th 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AJJ

/DAVID L. SORKIN/  
Primary Examiner, Art Unit 1797